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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SIMONA TANASESCU, Plaintiff and Appellant, v. THE KROGER CO. et al., Defendants and Respondents.	G056119 (Super. Ct. No. 30-2017-00917022) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Michael P. Vicencia, Judge of the Los Angeles Superior Court, pursuant to AOC Reciprocal Agreement Order R-453-16. Affirmed.

Simona Tanasescu, in pro. per., for Plaintiff and Appellant.

Wolfe & Wyman, Gregg Vorwerck and David C. Olson for Defendant and Respondent, The Kroger Co.

Xavier Becerra, Attorney General, Danielle F. O'Bannon, Assistant Attorney General, D.L. Helfat, Deputy Attorney General, for Defendants and Respondents, State of California and Superior Court of California, County of Orange.

* * *

Plaintiff Simona Tanasescu appeals from a judgment of dismissal entered in favor of defendants, The Kroger Co. (Kroger), the State of California (the State), and the Superior Court of Orange County (OCSC), after the trial court sustained without leave to amend the defendants' demurrers to the complaint. Tanasescu had sued these defendants for their respective roles in a purported scheme to prevent her from recovering damages in an earlier slip and fall lawsuit she had filed against Kroger.

Tanasescu, representing herself in that earlier lawsuit, ultimately agreed in open court to a settlement, but later changed her mind. Unable to prevent entry of the judgment enforcing the settlement agreement, she appealed. We affirmed the judgment in an unpublished opinion (*Tanasescu v. Ralphs Grocery Company et al.* (Nov. 30, 2015, No. G051032 [nonpub. opn.] (the prior opinion)), and now find ourselves experiencing a bit of déjà vu.

In the present appeal from the judgment dismissing her second lawsuit, Tanasescu raises some of the very same issues we decided against her in our prior opinion. For that reason, we agree with the trial court the doctrine of res judicata bars all of Tanasescu's present causes of action against these defendants. While there are multiple bases upon which we could affirm the judgment, one is enough. We conclude the trial court properly sustained the demurrers without leave to amend, and affirm.

I

BACKGROUND[1]

A. *The Slip and Fall Lawsuit*

Tanasescu slipped and fell in a Food 4 Less grocery store in February 2011. She retained an attorney who filed a personal injury complaint based on premises liability

[1] Tanasescu filed a motion to augment the appellate record with certain attached documents she designated for the record, but which were omitted. The motion to augment the record is granted. The State asked us to take judicial notice of the prior opinion. We grant that request as well.

and negligence in January 2013, naming Food 4 Less and Kroger West as defendants with "a business entity form unknown." Ralphs Grocery Company "doing business as Food 4 Less" (Ralphs) answered the complaint, explaining it had been "erroneously sued and served as Kroger West and erroneously sued and served as Food 4 Less."

Tanasescu, at this point acting in pro se, attempted to strike the answer, asserting that because she had not named Ralphs as a defendant, it was not a proper party to the action and should not be allowed to intervene. The trial court rejected Tanasescu's attempt to preclude Ralphs from defending the action. Though Tanasescu sought neither reconsideration (Code Civ. Proc., § 1008) nor writ review of the trial court's ruling, she would not concede the issue and raised it again at a hearing during discovery proceedings after the matter was assigned to a new judge.

When Ralphs sought to compel Tanasescu to submit to a medical exam, Tanasescu opposed the motion by filing a new motion to strike Ralphs' answer and quash the discovery. Tanasescu asserted Ralphs was still "a stranger to the action" and had no right to obtain discovery from her. Tanasescu claimed court staff aided Ralphs' fraudulent entry into the lawsuit by accepting Ralphs' answer at the filing window, substituting Ralphs as a defendant in the court record in place of Kroger, and altering dates and names in the case docket to facilitate Ralphs' "intervention" in the case. Tanasescu argued these actions constituted fraud upon the court.

Tanasescu also accused Ralphs of misrepresenting itself as "doing business as" the Food 4 Less in which Tanasescu fell. Tanasescu argued Ralphs falsely used the "doing business as" (d.b.a.) designation as to Food 4 Less because the d.b.a. paperwork Ralphs had filed with one or more licensing authorities was somehow incomplete or insufficient. Thus, Tanasescu contended, "Ralphs Grocery Company dba Food 4 Less" was not a legal entity when it filed the answer.

The trial court denied Tanasescu's motion to strike the answer and to quash Ralph's discovery requests, and granted Ralphs' motion to compel Tanasescu's

independent medical examination. The court was unconcerned with Tanasescu's argument about Ralph's improper d.b.a. designation, commenting, "Well, if they didn't file a proper d.b.a. [form,] I don't think it's going to affect your judgment if you get a judgment." In any event, the court said, the issue of whether Ralphs was "the right party or not . . . is not in front of me . . . . It's been decided" by the prior judge who denied Tanasescu's first motion to strike the answer.

The parties settled the case on the record the next month at a mandatory settlement conference. Tanasescu agreed to accept $12,000 in exchange for a release of all claims arising from the slip and fall incident. When Tanasescu failed to sign the release within 60 days, as required by the settlement agreement, Ralphs filed a motion to enforce the settlement (Code Civ. Proc., § 664.6), which the trial court granted. The court entered judgment per the agreement.

B. The Prior Opinion

Tanasescu's appeal from entry of the judgment enforcing the settlement agreement challenged the settlement agreement on various grounds. One is pertinent to the present appeal. In the prior opinion we characterized the argument as follows: "Plaintiff contends the trial court and its clerical staff made critical errors before she entered the settlement agreement, including allowing Ralphs to defend the case when plaintiff insisted the proper defendants were Ralphs' parent company, Kroger or Kroger West, and its subsidiary Food 4 Less."

We rejected the argument these purported "errors" by the trial court and filing clerks constituted grounds for invalidating the settlement agreement. "The trial court heard and rejected these contentions before [Tanasescu] later entered into a settlement agreement. . . . [Tanasescu's] decision to settle the case precludes her from challenging the court's law and motion rulings preceding the settlement."

The opinion noted Tanasescu raised the specter of fraud on the part of court staff in her second motion to strike Ralphs' answer. She had asserted Ralphs

"fraudulently entered the lawsuit," and accused court staff of participating in the "fraud upon the court" by accepting Ralph's answer and substituting Ralphs as a defendant in the court record. "She asserted generally that 'fraud vitiates everything,' and included the court clerks' allegedly erroneous actions as examples of fraud." Despite the seriousness of a fraud allegation, we concluded, "Plaintiff's contentions have no merit because she settled the case."

We explained: "A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts. (*Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30, 36.) Here, [Tanasescu] did not reserve in the settlement any right to challenge the trial court's earlier rulings or the clerks' administrative actions. To the contrary, as the trial court repeatedly reviewed with [Tanasescu], the settlement constituted a 'full *and final*' resolution of her claims. If she had ongoing concerns about the trial court's rulings or the clerks' conduct preceding the settlement, she could have continued to litigate the case to a final judgment and appeal based on those concerns. But by settling the case without reserving a right to challenge those matters on appeal before the settlement became final, she waived the right to assert those claims. A party may not attempt to revoke a valid settlement and refuse to sign a release or other written documents contemplated under the settlement; rather, the settlement will be enforced. (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1302.) There is no merit to [Tanasescu's] attempt to unilaterally dissolve the settlement or escape its terms."

The prior opinion also specifically rejected Tanasescu's contention there could be "a loophole or means around the settlement in which she could later sue Ralphs or Kroger or Food 4 Less based on her claim the trial court lacked 'jurisdiction' because it erred in finding Ralphs was entitled to defend the action. . . . [T]hat position is inconsistent with her agreement to settle the case. And as the trial court pointed out,

under the litigation privilege, there is no basis on which her claim for alleged wrongdoings during litigation would be successful. (Civ. Code, § 47.)"

The opinion continued: "But more to the point, . . . the plain terms of [Tanasescu's] agreement precluded her objection to signing the release. Simply put, she settled 'all claims arising out of this matter' and therefore could not refuse to fulfill the settlement and sign the release based on the notion she still had viable claims arising from the litigation. *The litigation itself arose from her alleged slip and fall incident*, and therefore any purported claims arising *from the litigation* were precluded by her settlement of 'all claims . . . arising out of this matter' and 'arising out of this incident.'" (Italics added.)

In a modification to the opinion, we added a footnote addressing Tanasescu's contention that Ralphs was not a proper party to the lawsuit because of "allegedly incomplete or missing 'd.b.a. paperwork[.]'" We held: "[P]laintiff is mistaken that defendant's allegedly incomplete or missing 'd.b.a. paperwork' somehow precluded it from defending the action under Business and Professions Code section 17918. That section by its terms and annotations does not apply to tort actions."

Tanasescu petitioned for review in the California Supreme Court. On February 17, 2016, the high court summarily denied the petition, laying to rest Tanasescu's challenges to the settlement, and ending all claims arising from the slip and fall incident. Or so we thought.

C. *This Action Arising from the Slip and Fall Case*

On April 26, 2017, Tanasescu filed the instant action, a 70-page complaint stating nine causes of action against multiple defendants. Relevant to this appeal, Tanasescu sued the State and OCSC "for the wrongful acts of its Judicial Branch employees," including "unknown" filing clerks, the two trial court judges who handled the case, the temporary judge who handled the mandatory settlement conference, this appellate panel for affirming the judgment, and "unknown employees of the California

Supreme Court" for refusing to grant review of our decision affirming the judgment. (5th, 7th-9th causes of action.)[2] Tanasescu sued OCSC alone in the sixth cause of action for violation of the Public Records Act (Gov. Code, § 6250 *et seq*.), though she did not defend that claim against demurrer, and abandoned it on appeal. Finally, she sued Kroger "for its own actions and the actions of its subsidiaries" Ralphs and Food 4 Less, and of its defense counsel and third party insurance administrator. (3rd, 4th, 7th-9th causes of action.)[3]

All the causes of action Tanasescu states against Kroger, the State, and OCSC are based upon a single, repetitive theme, reflecting her enduring sense of grievance based on events in the slip and fall litigation. Essentially, Tanasescu alleges the "fraudulent intervention" of Ralphs in the action and wrongful "removal" of Kroger as a defendant was a scheme on the part of her former attorney, Kroger, its subsidiaries Ralphs and Food 4 Less, "unnamed" superior court filing clerks, and the two superior court judges who denied her two motions to strike the answer. Tanasescu alleges that scheme was designed to prevent Tanasescu from recovering her damages from the slip and fall incident, and to benefit Kroger by letting it evade responsibility for her injuries.

Tanasescu further alleges the scheme achieved its purpose, allowing Kroger to thwart her discovery efforts, destroy evidence (original photographs and surveillance videotape from the store where she fell), and subject her to intrusive, humiliating discovery (medical records production, an independent medical exam) ordered by the "invalid" entity Ralphs, all of which unduly burdened and traumatized her, broke her

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[2] The Attorney General points out in his respondent's brief that the proper defendant is the Judicial Council, which Tanasescu inexplicably failed to sue, despite having submitted a timely Government tort claim to that body. Tanasescu concedes in her opening brief she "erroneously sued" the State rather than the Judicial Council.

[3] A separate appeal (*Tanasescu v. Vaziri*, G055578) resolves Tanasescu's appeal of the judgment of dismissal entered in favor of her former attorney, Siamak Vaziri, following the order sustaining his demurrer to the complaint without leave to amend.

will, and caused her to agree to the unfair settlement with Ralphs. She further alleged the settlement with Ralphs was invalid because "Ralphs Grocery Company d.b.a. Food 4 Less," the settling party, was not a legal entity and not a proper party to the action. Consequently, she alleges, the judgment entered upon that settlement was invalid and subject to being set aside for fraud.

D. *The Demurrers*

The State, OCSC, and Kroger each demurred to the complaint on numerous grounds. For example, the State argued all claims against it were barred by the claim preclusion doctrine, the bar of judicial and quasi-judicial immunity, Tanasescu's failure to file a timely government claim (Gov. Code, § 915, subd. (b)(1) & (2)), and the fact the State is a separate entity than the judicial branch, among other arguments. OCSC made some of the same arguments, asserting all claims against it were barred by the claim preclusion doctrine and the bar of judicial and quasi-judicial immunity, and the sixth cause of action (Public Records Act violation) "is not actionable because Government Code [section] 6252[, subd.] (f)(1) specifically excludes the court system from the ambit of the California Public Records Act." Kroger's demurrer attacked each cause of action against it for failing to state a cause of action.

The trial court sustained all three demurrers without leave to amend. On the State's demurrer, the court agreed with the State the Judicial Council was the proper party and cited Tanasescu's concession "that the State of California is erroneously sued." The court cited several grounds for sustaining OCSC's demurrer: "[t]his lawsuit is barred by the claim preclusion doctrine which precludes a Plaintiff from re-litigating identical issues. This lawsuit is also barred by judicial and quasi-judicial immunity since it attacks clerks' and judges' judicial and quasi-judicial actions." As for Kroger, the court simply stated, "Plaintiff fails to state facts sufficient to constitute a cause of action."

II

DISCUSSION

A. *Standard of Review*

"On appeal, we review the trial court's sustaining of a demurrer without leave to amend de novo, exercising our independent judgment as to whether a cause of action has been stated as a matter of law and applying the abuse of discretion standard in reviewing the trial court's denial of leave to amend. [Citations.] Plaintiff bears the burden of proving the trial court erred in sustaining the demurrer or abused its discretion in denying leave to amend. [Citations.]" (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1038; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

B. *The Doctrine of Res Judicata Bars All Causes of Action Against These Defendants*

In *Boeken v. Philip Morris* (2010) 48 Cal.4th 788, the California Supreme Court explained the elements of the claim preclusion doctrine: "'"The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding []."'" (*Id.*, at p. 797.)

The issues raised in this action and the underlying slip and fall case are identical: Tanasescus' alleged right to recover for her slip and fall injuries at issue in the underlying action and the validity of the judgment in that case. Thus, for Tanasescu to prevail in this appeal, we would have to overrule our prior decision and overturn the judgment in the underlying action. Consequently, the first requirement for claim preclusion is met.

The second element of res judicata is satisfied because the complaint pleads the judgment in the underlying action was affirmed on appeal. (*Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 312 [where the parties to an

action settle their dispute and agree to a dismissal, it is a retraxit and amounts to a decision on the merits and as such is a bar to further litigation on the same subject matter]; *Consumer Advocacy Group, Inc. v. ExxonMobil Corp.* (2008) 168 Cal.App.4th 675, 694 ["A court-approved settlement acts as a final judgment on the merits for the purposes of res judicata."].)

The final element of res judicata is satisfied because Tanasescu is the plaintiff in this action and was the plaintiff in the underlying action.

The claim preclusion doctrine bars this case even though the complaint adds as parties the State and OCSC, entities who were not parties to the underlying case: "Both California and federal law allow the defensive use of issue preclusion by a party who was a stranger to the first action**.**" (*Burdette v. Carrier Corp.* (2008) 158 Cal.App.4th 1668, 1688 (*Burdette*).) Defensive use of collateral estoppel precludes a Tanasescu from relitigating identical issues by merely switching adversaries. (*Parklane Hosiery Co. v. Shore* (1979) 439 U.S. 322, 329; *Dailey v. City of San Diego* (2013) 223 Cal.App.4th 237, 256.)

The doctrine of defensive res judicata bars this action because it prohibits relitigation of matters which were within the scope of the underlying action, related to its subject matter, and relevant to the issues which could have been raised in the underlying action. As explained in *Burdette, supra,* 158 Cal.App.4th at pp. 1674-1675: "'A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on matters which were raised or could have been raised, on matters litigated or litigable.'" (*Id.*, at p. 1675.)

Tanasescu attempts to circumvent the application of claim preclusion here, arguing, "The [] judgment on the invalid settlement is not a valid judgment, therefore [it] can be attacked[.]" Kroger aptly answers this argument by pointing out a valid, final judgment can be set aside only by an independent action for *extrinsic* fraud (see *Kachig v.*

Boothe (1971) 22 Cal.App.3d 626, 632 (*Kachig*)) and Tanasescu's complaint lists merely purported acts of *intrinsic* fraud.

Extrinsic fraud is "fraud that prevented the trial of a claim or prevented the defrauded party from getting into court at all." (*Los Angeles Airways, Inc. v. Hughes Tool Co.* (1979) 95 Cal.App.3d 1, 7 (*Los Angeles Airways*).) "California cases uniformly hold that the introduction of perjured testimony or false documents in a fully litigated case constitutes intrinsic rather than extrinsic fraud. [Citations.] Likewise, in a litigated case the concealment or suppression of material evidence is held to constitute intrinsic fraud. [Citations]." (*Kachig*, *supra*, 22 Cal.App.3d at p. 634.) Other examples of intrinsic fraud include "deliberate concealment of requested evidence during discovery proceedings[.]" (*Los Angeles Airways*, *supra*, 95 Cal.App.3d at p. 8)

Here, the "factual" basis for the fraud-based causes of action that form Tanasescu's "direct attack" on the underlying judgment consists of the alleged acts by the "supermarket defendants," the court clerks, and the trial court judges in furtherance of their shared scheme to commit a fraud on the court by allowing Ralphs to intervene in the action in place of Kroger. All these acts, individually and collectively, constitute only instances of "intrinsic" rather than "extrinsic" fraud. As such, they are not grounds for setting aside the judgment. (*Kachig*, *supra*, 22 Cal.App.3d at p. 632.)

The larger point, however, is that our former opinion affirmed the validity of the underlying judgment. Moreover, we did so fully aware of Tanasescu's allegations of fraud on the part of the same parties she accuses of fraud in the present lawsuit. As we stated in the prior opinion, Tanasescu released all such challenges to the settlement when she unreservedly agreed to settle "all claims arising from the litigation."

III

DISPOSITION

The judgment of dismissal is affirmed. Respondents are entitled to costs on appeal.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.